NANI NAGOO

v.

WAYNE GARY WILLIAMS

HIGH COURT MALAYA, PENANG
EDGAR JOSEPH JR J
[CIVIL SUIT NO. 417 OF 1981]
30 JANUARY 1984

TORT: *Negligence - Road accident - Damages - Quantum - Pretrial loss - Loss of future earnings - Loss of dependency - Apportionment of damages - Interest.*

The plaintiff, the mother of three children, lost her husband in a road accident. The defendant driver was found wholly to blame for the accident and damages awarded. The grounds of judgment were confined to the issue of quantum, for though the defendant had initially lodged a notice of appeal against the whole decision, he was appealing only against the quantum of damages.

Held:

A. Special Damages

The pre-trial loss of earnings should be, as agreed, at the rate of RM1,030 p.m. from the date of the accident to the date of the commencement of trial, resulting in the sum of RM20,980.

B. General Damages

[1] Loss of future support regarding the pre-retirement period was RM61,773.88. The probabilities were that the deceased would have retired as at least a Captain at a salary of RM1,560 p.m.

[2] Loss of support regarding the post-retirement period was RM18,532.17. Employment after retirement from the public service is a common occurrence which should be taken into consideration. With his training, the deceased could have secured employment in the private sector. It could be reasonably inferred from his station in life that the deceased must have been in good health and active.

[3] RM61,797.12 must be awarded for loss of pension.

[4] RM14,417.34 must be awarded for loss of gratuity on the assumption that the deceased would have retired as a Captain.

C. Agreed Special Damages

The agreed special damages were RM1,534.

D. Apportionment of Damages

Apportionment to be as follows:

RM57,500.51 to the widow.
RM35,000.00 to the first daughter.
RM35,000.00 to the second daughter.
RM50,000.00 to the son.

The children's shares were directed to be held by the Public Trustee in trust till the children attained majority, with liberty to apply.

E. Interest

[1] Interest on the special damages to be at 3% per annum but no interest to be allowed for damages for loss of future earnings.

[2] Interest on the judgment debt to be at 8% per annum (O. 42 r. 12 of the Rules of the High Court, 1980).

Cases referred to:
Cookson v. Knowles [1978] 2 All ER 604
Kow Ah Dek v. K. Ratnasingam [1981] 2 MLJ 24
Murtadza bin Mohamed Hassan v. Cheong Swee Pian [1980] 1 MLJ 216

Legislattion referred to:
Rules of the High Court 1980, O. 42 r. 12

For the plaintiff - N.T. Vello; M/s. Chang & Vello
For the defendant - Balachandran Mahesan; M/s. Bala Mahesan & Co.

JUDGMENT

Edgar Joseph Jr J:

Madam Nani d/o Nagoo, the unfortunate 26-year old widow in this case and the mother of three children aged 12, 8, and 3 years, respectively lost her husband, a 36-year-old Staff Sergeant in the Malaysian Armed Forces (deceased) in a road accident on 5 July 1981.

At the conclusion of the hearing I found the defendant driver wholly to blame for the collision and, as regards quantum, reserved my decision. I subsequently made the award for damages and, though initially, the defendant had lodged a notice of appeal against the whole of my decision, the present position is that his appeal is only against the quantum of damages. In the circumstances, I shall confine this judgment to that issue only.

The unchallenged evidence in this case was that the deceased, an obviously healthy man, was at the date of the accident in receipt of a salary of RM795 p.m. and a Service Allowance of RM45 p.m., thus amounting to RM840 p.m. It was also not disputed that had the deceased not died in the accident he would have attained the rank of a Warrant Officer II in 1985 and would then have been in receipt of a salary of RM985 p.m. and a Service Allowance of RM45 p.m. thus amounting to RM1,030 p.m.

On the above basis, and applying the principles enunciated in *Cookson v. Knowles* [1978] 2 All ER 604, 612 para E, it was agreed that pre-trial loss of earnings should be assessed at the rate of RM1,030 p.m. from date of accident to 28 April 1983, being the date of commencement of trial, thus resulting in the sum of RM20,980.

There was, however, a considerable dispute regarding the issues of loss of future earnings and the value of the loss of dependency.

Counsel for the defendant submitted that the widow had herself admitted that the deceased gave her RM750 p.m. out of which she returned RM200 to the deceased to enable him to repay the monthly instalments on a car loan and a further sum of RM100 to RM150 p.m. for pocket expenses. On this basis, it was submitted that the value of the dependency was RM400 p.m.

It was further submitted that the probabilities were that had the deceased not died in the accident, he would have completed 21 years of service in 1985 and would have qualified for a pension due to a Warrant Officer II. Thereafter, it was conceded, that though the deceased had no special qualifications, he would probably have continued to be gainfully employed as a Security Officer in a factory or a rubber estate until the age of 55. Thus the deceased, so the submission went, could be expected to have maintained the same standard of living to which he had been accustomed at the time of the accident.

It was accordingly submitted that the appropriate period of dependency, that is to say, the multiplier, should be 10 years and that, therefore, the correct sum to be awarded under this head was RM37,056.

As regards gratuity, it was urged that on the assumption that the deceased would have retired as a Warrant Officer II in 1985, after 21 years of service, and been in receipt of a last-drawn salary of RM985 p.m., the pension he would have received, applying the appropriate Army formula, would have been RM12,411. As the widow had previously received RM7,000 of this sum, only the difference, that is to say RM5,411 would still have to be paid to her and this should be the proper sum to award under this head.

As regards pension, it was urged that had the deceased retired as a Warrant Officer II in 1985, the pension he would have received, again applying the appropriate Army formula, would have been RM477.34. On the assumption that the deceased had a life-span of 68 years, the total pension he would have drawn for 27 years at this rate would have amounted to RM154,658.16. However, the widow has been, and still is, in receipt of a pension of RM276.76 p.m. and this would have to be reduced by RM136,264.32. Consequently, it was said that the difference of RM18,400.32 was the appropriate sum to be awarded under this head.

I shall now consider the submissions of Counsel. I did not accept that the deceased would have retired from the Army in 1985 had he not died in the accident. On the contrary, the probabilities are, that having regard to his service record as deposed to by his immediate superior, Major J. Koran (PW4), and I so found, that the deceased would have continued in service in the Army until 1993 when he would have retired, at least as a Captain, at the age of 48, on a salary scale appearing at p. 2 of the Exhibit P1, that is to say RM1,560 p.m. Accordingly, I assessed general damages for future loss of earnings as regards the pre-retirement period on the basis of 10 years' purchase and a dependency of RM1,000 p.m., after taking into account the incidence of Income Tax. Applying the Actuarial Tables, this would yield a sum of RM92,660.82. From this sum, I deducted one-third, to allow for contingencies, the vicissitudes of life, accelerated payment in a lump-sum and for what would have been spent on the deceased. The resulting figure was RM61,773.88 which I awarded.

Next, I thought it would be wholly wrong to assume that upon his retirement in 1993 the deceased would have lost all capacity to earn. Counsel for the defendant had himself conceded, and I so found, that with his training the deceased could have secured employment in the private sector as a security guard in a factory or a rubber estate. I also think that it could be reasonably inferred from his station in life that he must have been in good health and active. As Salleh Abas CJ said in *Kow Ah Dek v. K. Ratnasingam* [1981] 2 MLJ 24, 26 col. 2 para C to E:

> ...We however agree that employment after retirement from the public service at the age of 55 is a common occurrence which should be taken into consideration.
>
> If not injured the respondent being a teacher would likely give at least private tuition to some needy pupils. The income from such occupation may be fixed to be at RM600 per month and taking into consideration various contingencies, such as illness and lack of interest in taking up post-retirement job we think it is fair that we should fix 5 years of purchase.

I accordingly thought that I should make an award for general damages for loss of support in respect of the post-retirement period. For this purpose, I took a multiplier of ten years and a multiplicand of RM300 per month. Applying the Actuarial Tables, this would yield RM27,798.25 from which I deducted RM9,266.08 to allow for contingencies, vicissitudes of life, accelerated payment in a lump-sum and for what would have been spent on the deceased. The resulting figure was RM18,532.17.

As regards loss of pension, a Captain's pension for twenty years at RM954 p.m. would amount to RM228,960. From this, I deducted the pension the widow has been, is receiving and is likely to receive until she attains the age of 68 years - her probable life-span - which at the rate of RM276.96 would amount to RM136,264.32. The resulting figure after this deduction is RM92,695.68. Form this, I also deducted one-third thereof to allow for contingencies, vicissitudes of life, accelerated payment in a lump-sum and for what would have been spent on the deceased. The resulting figure was RM61,797.12 which I awarded under this head.

As regards loss of gratuity, on the assumption that the deceased would have retired as a Captain in 1983, the last-drawn salary of RM1,560 and applying the appropriate Army formula in P1, that is to say, 5% of last-drawn salary x number of months served, namely, 367, this resulted in the sum of RM28,626. From this sum, I deducted the gratuity of RM7,000 which had been paid to the widow. The resulting sum was RM21,626 and from this I also deducted one-third thereof to allow for contingencies, vicissitudes of life, accelerated payment in a lump-sum and what would have been spent on the deceased. The resulting figure was RM14,417.34.

There were certain small items of special damages amounting to RM1,534 which were agreed and in respect of which I made an award accordingly.

In the result, I gave judgment for the plaintiff as follows:

(a) RM20,980 being, special damages for pre-trail loss of earnings;

(b) RM61,773.88 being, general damages for post-trial loss of future earnings, in respect of pre-retirement period;

(c) RM18,532.17 being, general damages for post-trial loss of future earnings in respect of post-retirement period;

(d) RM61,797.12 being, general damages for loss of pension;

(e) RM14,417.34 being, general damages for loss of gratuity;

(f) RM1,534.00 being, agreed special damages.

Except for the sum of RM1,534 being the agreed special damages which I ordered to be paid to the widow, I apportioned the damages awarded as follows:

RM57,500.51 to the widow;
RM35,000.00 to the daughter ROOKINI, aged 12;
RM35,000.00 to the daughter SHANTI, aged 8; and
RM50,000.00 to the son BALAMURUGAN, aged 3.

I also directed that the children's shares of damages be paid to the Public Trustee to be held by him, in trust, pending the attainment of the age of majority in each case but, with liberty to apply.

As to interest, the position in law is that special damages attract interest at the rate of 3% per annum from date of accident to date of trial but no interest should be allowed for damages for loss of future earnings: (*Murtadza bin Mohamed Hassan v. Cheong Swee Pian* [1980] 1 MLJ 216). I therefore made a further order accordingly. It goes without saying that the

judgment debt will also attract interest at the rate of 8% per annum from date of judgment until satisfaction by virtue of the provisions of O. 42 r. 12 of the Rules of the High Court 1980.

I lastly ordered the defendant to pay the taxed costs of this action.

Also found at [1984] 2 CLJ 51